

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **JUN 11 2013** OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The case will be remanded to the director for further review and entry of a new decision.

The petitioner is a computer information storage company. It seeks to permanently employ the beneficiary in the United States as a Business Objects Applications Group Lead pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an Application for Permanent Employment Certification, ETA Form 9089, certified by the United States Department of Labor (DOL).

The Director denied the petition on May 2, 2012, finding that the petitioner failed to establish that the beneficiary had the requisite educational degree for classification as an advanced degree professional.

The petitioner filed a timely appeal, along with a brief from counsel and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. *See* 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is July 18, 2011, which is the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Upon review of the entire record, the AAO finds that the petitioner has overcome the ground for denial in the director's decision. The AAO determines that the petitioner has established that the beneficiary more likely than not had all the education specified on the ETA Form 9089 as of the priority date – July 18, 2011. According to the American Association of Collegiate Registrars and Admissions Officer's (AACRAO) electronic EDGE database, a 2-year Indian Master's degree following a 3-year Indian bachelor's degree is comparable to a U.S. bachelor's degree. The beneficiary earned a foreign equivalent degree to a U.S. bachelor's degree in computer science in January 2003 in conformance with the requirements of the ETA Form 9089 and the definition of "advanced degree" at 8 C.F.R. § 204.5(k)(2). However the petition is not yet approvable under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), for classification of the beneficiary as an advanced degree professional because it is not clear that the beneficiary acquired five full years of progressive experience following his degree.

The record contains letters from five previous employers/colleagues which indicate that the beneficiary worked in various positions during the time period of December 2002 thru October 2008 (after which he began working for the petitioner):

1. The beneficiary worked as a “reporting developer” for [REDACTED] from December 20, 2002 to January 6, 2005.
2. From January 12, 2005 to January 13, 2006, the beneficiary worked as a “business objects developer” for [REDACTED].
3. The beneficiary worked as a “business objects developer” for [REDACTED] from February 23, 2006 to July 2, 2007.
4. From July 2, 2007 to January 11, 2008, the beneficiary worked as a “senior tech specialist” for [REDACTED] from July 2, 2007 to January 11, 2008.
5. From February 29, 2008 to October 31, 2008, the beneficiary worked for [REDACTED] as a “programmer analyst.”

The record contains employment verification letters from the previous employers specified above, except for [REDACTED]. In those two instances, the employment verification letters have been submitted by [REDACTED] respectively. They state they are former supervisors of the beneficiary during his tenure with [REDACTED] but that they no longer are employed by those companies. Such letters are informative, but they do not comply with the terms of 8 C.F.R. § 204.5(g)(1) as they are not authored by any representative of those respective companies. For that reason, the case will be remanded to the director to solicit the required documentation from the director in order to establish that the beneficiary acquired five full-time years of progressive experience necessary to qualify as an advanced degree professional pursuant to section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

In view of the foregoing, the director’s decision will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.